General Merchandise.

General Merchandise

IS NH. I.H A RE ED & . IT IT AUTHOUT D C. CO.

T. SPENCER, JR., by T. SPENCER, his next friend and guardian, vs. W. C. PARKE. JUDD, C. J., McCULLY and AUSTIN, J. J.

OPINION OF THE COURT BY AUSTIN, J. This is an action of replevin tried in the Court below before Mr. Justice Judd and a Homolulu, February 3, 1882.

The plaintiff had a recovery of part of the property claimed specifically and of half of the judgment entered thereon the plaintiff disseats, and files his bill of exceptions,

tention of the property claimed by the plaintiff tunder an order issued in the bankruptcy proceedings against Thos. Spencer.

"That the instrument under which plaintiffs claim title purporting to be a deed, is not property executed to constitute a deed and plaintiff.

Under the Bankruptey Act of the United States lately repealed, the record was made presumptive proof of all the proceedings, and a certified copy of the assignment conclusive proof of the title of the assignment conclusive proof of the title of the assignment and adjudication in bankrupte and his right to sue therefor. By virtue of the assignment and adjudication in bankruptey the title of the bankrupt onli his property, including property conveyed in fraud of creditors, and all rights in equity, are at once vested in the assignment, and the tent of the bankruptey are at once vested in the assignment, and the tent of the assignment and adjudication in bankruptey the title of the bankruptey the

to the plaintiff. The presiding Judge properly so held on the trial below.

As matter of fact proving Thomas Spencer a backrupt did not prove him insolvent and for Defendant.

Show title for the creditors in this case and show the research of the creditors in this case and show the research of the creditors in this case and show the research of the creditors in this case and show the research of the creditors in this case and show the creditors in the proofs were required and were made.

The plaintiff also claims that the return of the defendant as Marshal admits the goods repleved to be the property of the plaintiff, and that thereby he is estopped from denying it. The order commanded the Mershal to take researches of all the property of Thomas ion of the Court by McQuilly, J.

hate paid for the goods replevied, a title claimed by Thos. Spencer, Jr., by any bill of sale would be void while Thos. Spencer remained in possession, by all the leading kindred cases since Twyne's case, decided in 1602. Benjamin on Sales, Sees. 181.5.6. The leading in this control of the sale of the sal

urden of proof was on the plaintiff in this See Greenleaf's Evidence, Voi. 2, Sec. 563. Merrit va. Lyon, 3 Barb, 110-12.

The only remaining point of the plaintiff is that there is the rally no evidence tending to about his that the control of the plaintiff is that there is the control of the plaintiff is the plainti show that the goods claimed were the goods

Of Thos. Spencer.

Upon this point we are clearly of the opinion A

Supreme Court of the Hawaiian Islands--- the defendant, there was sufficient evidence in Banco. January Term. 1882. to support it. The exceptions are therefore overraled. A. FRANCIS JUDD,

LAWRENCE MCCULLY, BENJ. H. AUSTIN. A. S. Hartwell and E. Preston for plainfil

NEIL CAMPEELL, GUARDIAN ET AUS, VS. MANU

residue thereof. From this verdict and the Judd, C. J., McCally and Austin, J. J. Opin ion of the Court by McCally, J.

reuts, and files his hill of exceptions.

From the Nov. Term, 1881, of the Third

The defendant justified the seizure and de-

purporting to be a deed, is not properly executed to constitute a deed and plaintiffs cases, were put in evidence, including the petition, the adjudication of Thos. Spencer as a bankrupt, and the appointment of his assignes.

The plaintiff excepts to the validity of the petition because swern to by a purported agent of the creditor under a power of atterney not sufficient to authorize the earth of the proceeding in bankruptcy of the filing of the bond therein required.

On looking at the power of atterney it anthorizes the attorney to "take all lawful means by suit or otherwise, for the recovery of debts due Andrew Welch, the party granting the power, and to compromise, sgree for, and settle the same, and to make, seal and deliver such acquittances, receipts, discharges, satisfaction of nortgage and other instruments as may be necessary or proper in the premises."

We have no doubt this power authorized P. C. Jones, the attorney by substitution for Weich, to proceed in bankruptcy against Thos. Spiencer suid to give the bond required. The spincer rand to give the

interest.

The proceeding was therefore properly begins. The Court acquired jurisdiction, and the subsequent proceedings are regular.

The plaintiff asked the Court to charge the jury that the defendant was required to show the acres that Thomas Spencer was a bankrupt and was properly so adjudicated. We think the record was properly so adjudicated. We think the proceedings taken, and no proof against it was made or probably could be made by the plaintiff. The objection was technical. The plaintiff. The objection was technical. The assigness in hankruptcy are not required to fight over anew upon every claim made against their estate as assigness, their title to act as such.

Under the Bankruptev Act of the United.

conveyed in fraud of creditors, and all rights in equity, are at once vested in the assignees, relating back to the commencement of the proceeding in bankruptey. Bump on Bankruptey, pp. 341, 439, 486, 438, 473, 482. United States Statutes at Large, Sees, 4992, 5043, 5047, 5049.

Without these special provisions the proper commencement of the proceeding and the formal adjudication and assignment would have been held conclusive as to all the world as to the right of the assignee to stand in place of the bankrupt and his creditors as to all his assets. Thereby no possible injury could arise to the plaintiff. The presiding Judge properly

it. The order commanded the Marshal to take possession of all the property of Thomas Spencer, Jr., at Hilo.

Under that order the defendant took the property in question. He labels his return:

"Inventory of goesis and merchandise sized January 20th, 1881, in the store of Thomas Spencer, Jr., by order of Saprene Court."

The return proper says, "By virtue of the within ender I did on the 20th January, 1881, take into my possession all the goods and effects of Thomas Spencer, Jr. in Hilo."

This is not a return which admits the property in issue here to be the plaintiff's. It specifies no property to belong to the plaintiff's. It refers, following the language of the order doing dominess under the name of Thomas Spencer, Jr..

The Marshal and his deputy knew they had The Marshal and his deputy knew they had a careful examinant by the plaintiff were the specifies no property to belong to the plaintiff's. It specifies no property to belong to the plaintiff's refers, following the language of the order doing dominess under the name of Thomas Spencer, Jr..

The Marshal and his deputy knew they had The Marshal and his deputy knew they had a careful examination of the locality, Jr. in the Court by McCourt, McCourt by McCourt, McCourt, In the large for both parties in addition to the record of the Court by Interview in addition to the record of the Court by Interview in addition to the record of the Court by Interview in addition to the record of the Court by McCourt, Intervent and Interview in addition to the record of the Court by Interview in addition to the record of the Court by Interview in addition to the record of the Court by Interview in addition to the record of the Court by Interview in addition to the record of the Court by Interview in addition to the record of the Court by Interview in addition to the record of the Court by Interview in addition to the record of the Court by Interview in addition to the record of the Court by Interview in addition to the record of the Court by Interview in addition to th

of seizure to "the property of Thos. Spencer doing husiness under the name of Thomas Spencer, Jr."

The Marshal and his deputy knew they had no right under the order to take any but the property of Thomas Spencer, and they seized that put intended to so return. But even if the hanguage used could be construed as an admission of title to any part of the property in the plaintiff, it does not estop the efferdant.

The cases cited by the plaintiff's counsel are not input here. They held an estoppel in favor of those to whom the officer owes a duty.

In this case the defendant owes no duty to the plaintiff. He holds in apprehition to him. The plaintiff is most a party to the order. He stands as a stranger to it. A direct admission that he or any other stranger owns the goods he was directed to seize as Those Spencer's cannot preclude the defence by the officer of those whom he represents.

This admission stands like the admission of any other party. It is evidence, but may be explained or contradicted. The defendant was not called upon to say or do snything about the plaintiff airber excepted to the refusal of the court to charge that the partner of proof was on the plaintiff. The actual possession of the goods when taken, and that the burden of proof was on the plaintiff. The actual possession of the goods replevied was shown to be in Thos. Spencer, Whether he beld personally or as guardian for the plaintiff. The setting of the guardian for the plaintiff. The setting of the goods replevied was shown to be in Thos. Spencer when the plaintiff is the order of the proof was on the plaintiff. The setting of the goods replevied was shown to be in Thos. Spencer when the plaintiff is the conduction of the goods replevied to the conduction of the good

HAWAIIAN PIA! A LARGE CONSIGNMENT IN 50 For Sale by BOLLES & CO.

SUGAR. CONSIGNMENT OF A1. HA-

### WENNER & CO's

# CLOSING out SALE of JEWELRY

Gold and Silver Watches!

An Assortment of Precious Stone s DIAMONDS, PEARLS, RUBIES &c., &c.

GOLD AND SILVER PLATED WARE !

Shell and Kukui Ornaments, Gold and Silver Sets,

Bracelets, Brooches, Solid Silver Spoons, Silver Cups, Napkin Rings, Sleeve Buttons, Scarf Pins, and a

Which we will Sell at Very Low Rates.

As this is a Bona Fida Closing Out Sale, Call Before You Buy Elsewhere, of

> WENNER & CO., 92 FORT STREET.

# CEO. C. SHREVE & Co.,

MANUFACTURERS OF

FINE JEWELRY! I IO Montgomery St., San Francisco, Offer:Better Inducements

### to Purchasers of WATCHES, DIAMONDS, JEWELRY, SILVERWARE, CLICKS

RIC., THAN ANY OTHER HOUSE ON THE PACIFIC COAST.

TET A Pine Assertment of Quartz Jewelry, of Unique Designs, and of OUR OWN MANUFACTURE trys on hand, AT LOW PRICES. We have the Largest, the Finest, the Cheapest Stock of Goods in our Line !

In California. All Goods marked in plate figures, and but one price.

NOTICE.

### PINAFORE AGAIN.

Wednesday, December 28,

At 7:30 o'clock A. M.,

PATIENCE

Palmer & Co's Drug-store

### NEW & DESIRABLE GOODS

We Have Recently Received a Large Stock of Goods in Our Line, many of which are Entirely New in this Market, ex Late Arrivals, viz: Barks F. S. Thompson and Calbarien, from New York: Barks Ella, Lady Lampson, W. H. Meyer and S. S. City of New York,

# Large Invoices of Goods!

from New York, Boston, and San Francisco. Bk. Sir Lancelot with Fence Wire, Paint Oil, &c., from England OUR STOCK IS

VERY LARGE and COMPLETE

Agricultural Implements, Builders' Hardware. All Kinds of Mechanics' Tools, House Furnishing Goods.

A BEAUTIFUL LINE

# SILVER PLATED WA

CHANDELIERS, LAMPS, LANTERNS. Averill Mixed Paints, Hubbuck & Son's and Other Monufacturers of

BEST ENGLISH PAINTS

### American Paints & Brushes Berry & Bros. Superior Varnishes, Valentiae's Carriage Varnishes, Best Brands

Keresene Oil, American Lubricators & Lubricating Corps, Lubricating Compound. A FULL LINE OF LUBRICATING OILS MANILA AND SESAL ROPE, Etc., Etc.

DILLINGHAM&Co., FortSt.

BOILED LINSEED PAINT OIL.

BLOCKS AND MAST HOOPS.

WITH IMMEDIATE POSSESSION TRAI

EXTRA FAMILY BEEF! PATENT IRON STRAPPED BLOCKS IN HALF BARRELS, PIG PORK Guava Jelly, Among the Endless Variety REFINED A. NO. 1 SUGAR

F. HORN, Pratical Confectioner & Pastry Cook BAKERY Pioneer Steam Candy, Factory

Lemon and Tamarind Syrups always on hand Tamarinds Put up in A. No. 1 Refined Segars, blighly commended for Sea voyages.

American, French, English German Pastries Made to Order at she

Wedding Cakes Ornamented In the highest Style of Art.

Cream Candles. No. 71 Hotel Street bet, Nanana and F

ESTABLISHEDIN 1852. L.P.FISHER'S

NEWSPAPER ACENCY,

N. all Newspapers published on the Pacific Coast, the Sandwich Islands, Polynesia. Mexican Ports. Panama, Valparaiso, Japon China, New Zealand, the Australian Colonies the Eastern States and Enrope. Files of nearly every Newspaper published on the Pacific Coast are kept constantly on hand, and all advertisers allowed free access to them during business home. The Hawaitan forgette is kept on file at the office of L. P.

SPEAKS FOR ITSELF! FISHER'S CHAMPAGNE CIDER

NEW GROCERIES!

E. P. ADAMS. IN ADDITION TO USUAL STOCK

HAVE JUST RECEIVED Cases Tripe, Cases Limeh Tongues Cases Clauss, 1 and 2 lb. tins:

Cases Cranberry Sauce. Cases Bonst Turkey and Chicken. Cases Baked Macaroni

Cases Family Pork, 5 lb, tins; Cases Posted Meats, Cases Fruit Butter, FOR SALE BY E. P. ADAMS.

QUEEN STREET. THE HAWAIIAN HOTEL,



ROTEL STREET, BOSOLUL

FIRST-CLASS IN EVERY RESPECT.

THE LARGEST STOCK AND MOST COM-THE PRINCIPAL PART OF OUR STOCK IS OBTAINED

FromFirst Hands. Enabling Us to Sell at VERY LOW Figures. We keep none but the best. Physicians Prescriptions carefully com-counded by a experienced Pharmacist at any hour of the day or night, at

HOLLISTER & CO.'S. NOTICE.

### THE LONG ESTABLISHED SODA HOLLISTER & CO.

IS STILL IN EXISTENCE. We have the Most Complete Machinery,

For making a pure article All water used in our Pacinry is FILTERED. More

BY THE LATEST ARRIVALS PROS SAN FRANCISCO E HAVE RECEIVED A LARGE

ittion to our former stock of Ship Chandlery in Provisions, &c., &c., which gives us the

Greatest Assortment of Goods st on those Islands, all of which will be sold at the avet Markot Prices, as betal. Our Islands and the Nic returnly are respectfully invited to examine 18 d LIME! LIME!

EXBRINE "WPESTLER" APRIL Family Groceries. NEW ANSIRTMENT INCLUDING the very fine Goods for tall by BOLLES & CO.

EXTRA MESS BEEF! BOLLES & CO

HEADQUARTERS

Toy Books,

GOOD THINGS AT SANTA CLAUS'

Art, Presentation, Miscellaneous, Juvenile and

A Feast of Literature

POR ALL AGES THAT HAS Never Been Excelled in This City,

ART TOY BOOKS: Afternoon Tea, Under the Window, Printly Persys Bodley Books, Zizzag Journeys in Europe.

Favorite Gems,

Unries My King. Unries My King. In the Pulser of the King. Colton's qto. Atlas,

Photograph and

Autograph Albums, ART GOODS NOVELTIES Notice to the Public.

For American Watch Co. of Waltham, Mass ROBBINS & APPLETON,

W. H. STONE, COMMISSION AND EXPRESS AGENT.

HENRY J. HART, 887 9 ELLIS A. HART TO FOR BALK BY

the Minister of the Interior for a voting place. As they cannot leave the settlement, they must east their votes there, or cast no vote. For several years it has been the practice of the Minister of the Interior for a voting cast no vote. For several years it has been the practice of the Minister of the Interior for a voting and place. As they cannot leave the settlement, they must east their votes there, or cast no vote. For several years it has been the practice of the Minister of the Interior for a voting all the subject, and who are well planters will be able to settle amongst the practice of the Minister of the Interior for a voting all there seems in the minds of competent men, who have given considerable attention to the subject, and who are well planters will be able to settle amongst themselves first, thus saving all unnecessary acrimony of public discussion upon that the outlook as far as the sale of sugar is